



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 9, 1996

Mr. Jason C. Marshall  
Nichols, Jackson, Dillar, Hager & Smith L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR96-0504

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38636.

The City of Coppel (the "city") which you represent, received a request for certain information including:

1. allegations of misconduct by a former police officer;
2. responses by the former police officer to the allegations;
3. resignation letter(s) signed by the former police officer;
4. recommendation letter(s) prepared by the supervisors of the former police officer.

You have released the portion of the information pertinent to the request for the police officer's resignation letter(s) and recommendation letter(s). You have submitted documents for our review. You contend the documents are excepted from required public disclosure under the common law or constitutional right of privacy under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld on the basis of common-law privacy, if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Nonetheless, it must be noted that the public has an interest in knowing how a police department has resolved complaints against a police officer and the public's interest ordinarily outweighs the officer's privacy interest, even if some complaints are found to be "unfounded" or "not sustained." Open Records Decision No. 484 (1987).

Additionally, section 552.101 excepts information considered to be confidential by statute. The following types of documents are confidential by statute: communications between one licensed to practice medicine relative to or in connection with any professional services as a physician to a patient, medical records or communications between a physician and patient under the Medical Practice Act, V.T.C.S. art. 4495b, §5.08 (a),(b), (c), which may be disclosed only as permitted under section 5.08;<sup>1</sup> communications between a patient and a mental health professional or records concerning the identity, diagnosis, evaluation, or treatment of a patient under Health and Safety Code section 611.002(a); records which reveal the results of polygraph examinations, V.T.C.S. art. 4413(29cc). We have marked the type of information that must be withheld as confidential information under these statutes.

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<sup>1</sup>Medical records created by an individual "under the supervision" of a physician are also confidential under article 4495b. Open Records Decision No. 324 (1982) at 2.

Some of the records you submitted were compiled during the 1995 calendar year and come under portions of the Family Code governing access to records of victims of child abuse.<sup>2</sup>

The pertinent text of section 34.08 of the Family Code reads:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes of this code under regulations adopted by the investigating agency.<sup>3</sup>

Some of the requested information consists of "reports, records, communications, and working papers" used or developed in an investigations made under chapter 34.08 of the Family Code. Because you have not cited any specific rule that the city has adopted with regard to the release of this type of information, we assume that no such regulation exists. Accordingly, this provision does not grant the law-enforcement officials controlling these documents discretion as to who else may see them. We conclude, therefore, that the city must withhold these records which we have marked in their entirety pursuant to former Chapter 34.08, now encompassed under section 261.201 of the Family Code.

Furthermore, to the extent that the documents you have provided reveal criminal history report information ("CHRI"), we note that generally, such information is confidential and not subject to disclosure as applied through section 552.101 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public.<sup>4</sup> Accordingly, the documents which reveal CHRI must be withheld.

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<sup>2</sup>The Seventy-fourth Legislature, in House Bill 655, recodified the Family Code relating to reports of child abuse, including the repeal of section 34.08 and its substantial revision in chapter 201 of the Family Code, effective January 1, 1996. See Act of April 6, 1995, ch. 20, § 1, 1995 Tex.Sess. Law Serv. 113, 262 (Vernon) (codified as Fam.Code. §261.201); Act of May 26, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (Vernon).

<sup>3</sup>Subsections (b) and (c), both inapplicable here, provide for review of investigation information by an adoptive parent of a child or by an adult who was subject to a chapter 34 investigation as a child.

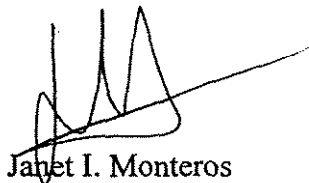
<sup>4</sup>See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Additionally, section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; see also *id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies).

We observe that a review of your documents reveal information subject to section 552.117 of the Government Code which serves to except from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 at the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. We have marked the documents that may be withheld under this provision.

In conclusion, we have reviewed the documents submitted for our consideration and conclude that, except as noted, you must release all the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 38636

Enclosures: Marked documents

cc: Mr. Arthur H. Kwast  
P.O. Box 1397  
Coppell, Texas 75019  
(w/o enclosures)